Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	WT Docket No. 04-111
	)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services	)	

To: Chief, Wireless Telecommunications Bureau

COMMENTS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston"), on behalf of its rural Commercial Mobile Radio Service ("CMRS") clients (the "Blooston Rural Carriers") and pursuant to Rule Section 1.419 of the Commission's Rules, hereby submits comments in response to the *Notice of Inquiry* ("NOI") in the above-captioned proceeding. In brief, the Blooston Rural Carriers believe that rural CMRS carriers face significant competitive pressures from nationwide carriers, even though, in rural areas, these carriers may only provide service along major highways and in larger rural communities. Moreover, the ability of rural CMRS carriers to survive and to compete effectively with nationwide and regional CMRS carriers is threatened by (1) the disproportionate burden that unfunded regulatory mandates (such as E911, CALEA and LNP) place on rural carriers; (2) the inability of small carriers to negotiate acceptable roaming rates with nationwide and regional carriers; and (3) excessive and unrestrained designation of wireless carriers as Competitive Eligible Telecommunications Carriers ("ETCs") in rural telephone company service areas.

I. STATEMENT OF INTEREST

The Blooston Rural Carriers are independent telephone companies, including telephone cooperatives, that are striving under strong economic pressures to bring advanced telecommunications services to their rural communities. Most have participated in spectrum auctions with mixed success. All are expending significant resources in trying to determine how best to make use of wireless technologies for the benefit of the rural communities they serve.

II. COMMENTS OF THE BLOOSTON RURAL CARRIERS

In its NOI, the FCC seeks comment on the following general questions:

- What is effective competition?
- What metrics are available to afford the Commission insight into the performance of the CMRS industry?
- How do the metrics of the CMRS industry's structure and other factors vary across different geographic areas, particularly between rural and urban?
- How do barriers to entry affect the industry's market structure, including the competing entities, the extent of deployment of CMRS services, and the types of services that are made available?
- What are the most significant recent changes or developments in pricing plans, advertising and marketing, capital expenditures, and new technology deployment?
- What data are available on current and prospective development and usage of wireless high-speed internet access services through mobile and portable computing devices using Wi-Fi and how should such data be considered?
- How do competitive conditions and performance in the U.S. CMRS industry compare with those in other countries?

In addition, the Commission seeks comment on whether the Commission's market-oriented policies have provided benefit to consumers, and whether such policies have had the same effect in urban and rural areas. The Blooston Rural Carriers will respond to some of these questions below.

III. The Commission Should Adopt Policies to Ensure that Rural Carriers may Continue to Provide Affordable CMRS Services to Rural and Underserved Communities

The Commission's NOI seeks comment on whether the Commission's market-oriented policies have provided benefit to consumers, and whether such policies have had the same effect in urban and rural areas. In this regard, the Blooston Rural Carriers strongly believe that adopting policies and rules that ensure the long-term viability of rural CMRS carriers will be of far greater benefit to rural consumers than the FCC's current policies, which encourage competition for scarce USF resources and inject an artificially high level of competition into markets that would not otherwise sustain more than a small handful of competitors.

The problem that many rural CMRS carriers are facing today can be summarized as follows: While large carriers may provide a signal over key portions of a rural interstate highway, or a downtown business district, they generally make little or no effort to provide service to the rest of the rural community, especially to remote farms, ranches and homes. This "cream skimming" of the most economically desirable portions of rural markets should not be encouraged for the sake of achieving greater competition because it threatens the viability of CMRS services that are designed to reach the entire rural community.

The Blooston Rural Carriers believe that the interests of rural consumers are best served when carriers that have a demonstrated willingness and commitment to serve rural communities have meaningful opportunities to participate in the provision of CMRS. One way that the Commission can help to ensure rural carrier participation is by adopting policies that help to reduce the disproportionate impact that unfunded regulatory mandates such as E911, CALEA and LNP have on rural carriers. Implementation of these technologies and capabilities calls for substantial capital, untold administrative man-hours, and ongoing monthly expense. Nationwide and regional carriers are able to spread these costs over a significantly larger subscriber base, thereby making the per-subscriber cost small by comparison. Small rural carriers do not have those economies of scale. Often, the costs for implementing the required capability can run substantially the same, if not higher, when that capability is deployed by a rural carrier. For example, the required upgrades for an MTX 100 wireless switch cost the same regardless of whether the switch is used in providing service to 5,000 subscribers or 50,000 subscribers. Similarly, dedicated circuits to an E911 selective router cost the same per month, regardless of whether 100 or 1,000 calls are routed.

Issues such as handset availability, access to training, schedules for switch upgrades and pricing from third-party vendors provide additional challenges for small carriers in relation to large carriers. The sheer volume of equipment orders placed by nationwide and regional carriers inevitably results in their priority treatment and more favorable pricing from manufacturers. This only compounds the problems faced by small carriers in their efforts to meet regulatory mandates in a timely fashion and represents yet another competitive disadvantage for small carriers. Nationwide and regional carriers are also able to spread their network costs over a much larger customer base. As a result, they are able to price their service offerings the same in rural areas as they do in larger markets. These pricing advantages make it difficult for small carriers to compete with larger carriers in those more densely populated and more traveled areas where their service areas tend to overlap, and the availability of wireless services in the smaller communities and in less traveled areas becomes threatened. Finally, because of the cost of these unfunded mandates, small carriers must use their very limited capital resources to achieve regulatory compliance, delaying their ability expand coverage and implement advanced services. This further hampers their ability to remain competitive.

In all too many cases, large carriers have rolled out innovative technologies that allow them to offer high-speed data, web browsing and improved capacity, while their small carrier counterparts are forced to spend their limited dollars in upgrading switches to meet mandates, in paying monthly charges to their competitors for leased circuits, and to third-party vendors for services related to meeting the mandates.

IV. Inequities in Roaming Rates and Service Availability

In order to remain competitive, small carriers are finding it increasingly difficult to negotiate acceptable roaming rates from regional and national carriers. All too often, small carriers lack the size and bargaining power to be successful in this endeavor. In the case of one of the Blooston Rural Carriers that provides service in Montana (3 Rivers Wireless), Western Wireless (operating under the Cellular One brand) charges it more than $0.30 per minute for roaming while, at the same time, it offers nationwide carriers such as AT&T Wireless and Sprint PCS roaming rates of $0.10 per minute or less.   As a result, 3 Rivers is forced either to subsidize that rate down to a competitive level (putting its bottom line at risk), or to offer unattractive roaming rates to its customers. This inequity puts 3 Rivers at a significant competitive disadvantage. In addition, these same carriers have either failed to register the 3 Rivers system in their databases so their subscribers never roam on the 3 Rivers system or they have put 3 Rivers on the lowest point of the preferred roaming list. As a result, the subscribers of larger carriers pick the 3 Rivers network only as a last resort, depriving this small CMRS carrier of potential roaming revenues. All attempts to negotiate better roaming rates to date have fallen on deaf ears.

A second roaming challenge faced by rural CMRS carriers is the fact that some carriers have internal rules dictating that they will not allow other carriers to roam on their network in areas where licensed service areas overlap. Where a nationwide carrier uses one transmit SID for the entire state, customers of the rural carrier end up not having access to roaming service *even in areas where there is no overlapping coverage* because rural subscribers are precluded from roaming in any market associated with that SID. Even when rural carriers have roaming agreements in place, they are not guaranteed the potential for roaming revenues because customers of certain nationwide and regional carriers are prevented from roaming on the competing carrier's network. In sum, large carriers are able to write the rules and unduly influence the roaming process, and this has an unfair and detrimental effect on rural carriers' ability to compete.

V. Definition of "Rural"

In its NOI, the FCC asks for comment on how it should define "rural" for purposes of analyzing the mobile telecommunications market for the *Ninth Report*. The federal government has multiple ways of defining rural, each reflecting the purposes for which the definitions are used, and the FCC has used three different proxy definitions of rural for purposes of analyzing the average number of competitors in rural versus non-rural counties. Under one current definition used by the Commission, population densities below 100 persons per square mile would qualify as rural. Applying this definition to the State of South Dakota, all but one of the sixty-five counties in South

Dakota would qualify under this definition as rural.[1] However, many of the counties where rural carriers provide service have population densities far below 100 persons per square mile; and a majority of South Dakota's counties have population densities below ten persons per square mile. For this reason, the Commission should consider using population density figures of less than 25 persons per square mile to define areas that are most appropriate for additional incentives and targeted regulatory relief.

When choosing among the various market designations used by the Commission for CMRS (which are not based on population density), the Blooston Rural Carriers believe that RSAs are an appropriate geographic model for the FCC to use in the *Ninth Report*. By definition, an RSA is an area made up of rural territory, without any significant urban or suburban area within its boundaries. This fact would allow the Commission to avoid any definitional quandaries, since operation of any facilities within the RSA would necessarily involve the provision of service to a rural area.

VI. Policies with Respect to ETC Designation and Wireless-Wireline Competition

The FCC also seeks comment on the effects that mobile telephone service has had on the provision of other telecommunications services by other service providers. In this regard, the Blooston Rural Carriers wish to point out the harmful effects that certain of the FCC's "pro-competitive" CMRS policies are having upon rural ILECs and their continued ability to provide universally available service with just and reasonable rate levels. In particular, it appears that in many cases the receipt of universal service monies

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[1] *See* Population Density Figures for Counties in South Dakota, attached as Appendix A. According to 2000 Census Bureau figures, the State of South Dakota has an average population density of less than 10 persons / sq. mile. Minnehaha County (with a population density of 183.1 persons / sq. mile) is the only county with a population density of greater than 50 persons / sq. mile. One county (Harding County) has a population density of only 0.5 person / sq. mile.

has been used to "pad the bottom line," as Commissioner Abernathy recently has put it,[2] instead of investing such monies in the supported services, as required by law. Indeed, one wireless CFO has reportedly referred to such USF monies as "margin." The upshot of this has been to place the fund under extreme pressure because of the candy store effect which USF promotes, where every wireless phone in a study area gets reported to USAC, and inefficient wireless carriers are propped up with subsidized federal grants.

The effect on the marketplace is not benign. Smaller wireless carriers are forced to compete against their better capitalized national and regional rivals, based in significant part on the fund itself, and are forced to seek ETC grants if only to compete in the capital markets, where such monies are considered as "margin."

The Blooston Rural Carriers appreciate that the Commission is attempting to fix the runaway universal service fund aspect in the currently pending USF Portability proceeding, and by giving guidance to the states in such proceedings as Virginia Cellular[3] and Highland Cellular.[4] The Commission should also encourage USAC to audit more closely the reported lines, in particular by wireless ETCs, including the examination as to whether maps used by such ETCs correctly reflect the study area of the incumbent, rural ILECs. The Blooston Rural Carriers are aware that at least some wireless ETCs appear to be using flawed map information, and will bring this to the attention of the Commission and/or USAC after further review. The Commission should also consider placing carrier-

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[2] Remarks by Commissioner Kathleen Q. Abernathy, NARUC Winter Meeting, Washington, DC (March 10, 2004).

[3] Federal-State Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, *Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (*rel.* January 22, 2004).

[4] Federal-State Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, *Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 04-37 (*rel.* April 12, 2004).

of-last-resort responsibilities on wireless and other ETCs, as recommended by Commissioner Martin in his Separate Statement to the *Federal-State Joint Board on Universal Service, Recommended Decision*. As the Commissioner noted therein, "[a]dopting the same 'carrier of last resort' obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers."[5]

VII. CONCLUSION

It is respectfully requested that the Commission take the above concerns into consideration in preparing its *Ninth Report* and in fashioning revised policies and rules with respect to the provision of CMRS services in rural America.

Respectfully submitted,
THE BLOOSTON RURAL CARRIERS

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[5] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45 (FCC 04J-1) Separate Statement of Commissioner Kevin J. Martin.

Population Density Figures for Counties
in South Dakota
per 2000 U.S. Census

Geography	Population	Area in square miles; Land area	Density per square mile of land area; Population
South Dakota	754,844	75,884.64	9.9
Aurora County	3,058	708.18	4.3
Beadle County	17,023	1,258.70	13.5
Bennett County	3,574	1,185.29	3.0
Bon Homme County	7,260	563.34	12.9
Brookings County	28,220	794.46	35.5
Brown County	35,460	1,713.07	20.7
Brule County	5,364	818.96	6.5
Buffalo County	2,032	470.59	4.3
Butte County	9,094	2,248.51	4.0
Campbell County	1,782	735.79	2.4
Charles Mix County	9,350	1,097.57	8.5
Clark County	4,143	957.92	4.3
Clay County	13,537	411.60	32.9
Codington County	25,897	687.67	37.7
Corson County	4,181	2,472.93	1.7
Custer County	7,275	1,557.69	4.7
Davison County	18,741	435.44	43.0
Day County	6,267	1,028.57	6.1
Deuel County	4,498	623.55	7.2
Dewey County	5,972	2,302.64	2.6
Douglas County	3,458	433.53	8.0
Edmunds County	4,367	1,145.58	3.8
Fall River County	7,453	1,739.86	4.3
Faulk County	2,640	1,000.14	2.6
Grant County	7,847	682.51	11.5
Gregory County	4,792	1,015.93	4.7
Haakon County	2,196	1,812.97	1.2
Hamlin County	5,540	506.86	10.9
Hand County	3,741	1,436.58	2.6
Hanson County	3,139	434.76	7.2
Harding County	1,353	2,670.50	0.5
Hughes County	16,481	740.92	22.2
Hutchinson County	8,075	812.82	9.9
Hyde County	1,671	860.97	1.9
Jackson County	2,930	1,869.13	1.6
Jerauld County	2,295	529.91	4.3

Population Density Figures for Counties in South Dakota

per 2000 U.S. Census

Geography	Population	Area in square miles; Land area	Density per square mile of land area; Population
Jones County	1,193	970.52	1.2
Kingsbury County	5,815	838.37	6.9
Lake County	11,276	563.23	20.0
Lawrence County	21,802	800.04	27.3
Lincoln County	24,131	578.09	41.7
Lyman County	3,895	1,639.96	2.4
McCook County	5,832	574.52	10.2
McPherson County	2,904	1,136.94	2.6
Marshall County	4,576	837.71	5.5
Meade County	24,253	3,470.63	7.0
Mellette County	2,083	1,306.49	1.6
Miner County	2,884	570.34	5.1
Minnehaha County	148,281	809.67	183.1
Moody County	6,595	519.67	12.7
Pennington County	88,565	2,776.15	31.9
Perkins County	3,363	2,871.62	1.2
Potter County	2,693	866.49	3.1
Roberts County	10,016	1,101.28	9.1
Sanborn County	2,675	569.01	4.7
Shannon County	12,466	2,093.88	6.0
Spink County	7,454	1,503.87	5.0
Stanley County	2,772	1,443.28	1.9
Sully County	1,556	1,006.90	1.5
Todd County	9,050	1,388.12	6.5
Tripp County	6,430	1,613.52	4.0
Turner County	8,849	616.82	14.3
Union County	12,584	460.38	27.3
Walworth County	5,974	707.81	8.4
Yankton County	21,652	521.55	41.5
Ziebach County	2,519	1,962.33	1.3